

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/04-01/07**

Date: **8 October 2013**

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser
Judge Erkki Kourula
Judge Ekaterina Trendafilova

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR v. GERMAIN KATANGA

Public

Prosecution's request to provide observations to the admissibility of "Acte d'appel des témoins DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350 contre la 'Décision relative à la demande de mise en liberté des témoins détenus DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350' rendue par la Chambre de première instance II en date du 1er octobre 2013 (ICC-01/04-01/07-3405)"

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States' Representatives

Democratic Republic of Congo

Kingdom of the Netherlands

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

Submissions

1. On 2 October 2013, Trial Chamber II issued its “Décision relative à la demande de mise en liberté des témoins détenus DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350” (“the Impugned Decision”), rejecting the request for release filed by Counsel for witnesses DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350 (the “Witnesses”) on the basis that the Court has no authority to decide on the matter.¹ The Witnesses, who were in detention in the Democratic Republic of Congo (“DRC”) when they were transferred to testify in the case against Germain Katanga and Mathieu Ngudjolo, are currently under the custody of the Court until their request for asylum before the Kingdom of Netherlands is decided.

2. On 7 October 2013, the Witnesses filed the “Acte d’appel des témoins DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350 contre la ‘Décision relative à la demande de mise en liberté des témoins détenus DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350’ rendue par la Chambre de première instance II en date du 1er octobre 2013 (ICC-01/04-01/07-3405)” (“Appeal”) pursuant to Article 82(1)(b).² The Witnesses indicate that the arguments related to both the admissibility of the appeal and the merits will be included in the document in support of appeal.³ The Witnesses also request suspensive effect of the Impugned Decision to avoid an irreparable prejudice as a result of the Appeals Chamber deciding after the proceedings on asylum are concluded.⁴

3. The Prosecution submits that for reasons of judicial economy it is desirable that the Appeals Chamber decides on the admissibility of the

¹ ICC-01/04-01/07-3405. The Impugned Decision was notified on 2 October.

² ICC-01/04-01/07-3408 OA14.

³ Appeal, para.3.

⁴ Appeal, para.4.

Appeal before it considers its merits and the request for suspensive effect.⁵ The Appeals Chamber has routinely considered necessary to examine *in limine* whether an appeal is admissible before addressing any other issue in cases where the admissibility of the appeal was similarly questionable.⁶

4. The Prosecution notes that the document in support of appeal needs to be filed by Thursday 10 October 2013 and that, according to the Witnesses, it will include both arguments on the admissibility of the appeal and on the merits. Therefore, the Prosecution would request that the Appeals Chamber sets a time frame for the Prosecution to respond - as a preliminary and separate issue - to the Witnesses' submissions on the admissibility of the Appeal before responding to any other matter.



Fatou Bensouda
Prosecutor

Dated this 8th day of October 2013

At The Hague, The Netherlands

⁵ Separate Opinion of Judge Song in ICC-01/04-01/06-925 OA8, para. 22.

⁶ See ICC-01/09-74 OA and ICC-01/11-01/11-64 OA.